

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

MEMORANDUM & ORDER
08-CV-3966 (CBA)

GOLDEN FEATHER SMOKE SHOP, INC., KIMO
SMOKE SHOP, INC., SMOKE AND ROLLS INC.,
SHAWN MORRISON, KIANA MORRISON, in her
individual capacity, MONIQUE'S SMOKE SHOP,
ERNESTINE WATKINS, in her individual capacity,
JESSEY WATKINS, WAYNE HARRIS, PEACE PIPE
SMOKE SHOP, RODNEY MORRISON, Sr.,
CHARLOTTE MORRISON, in her individual capacity,
RED DOT & FEATHERS SMOKE SHOP, INC.,
RAYMOND HART, in his individual capacity,
SMOKING ARROW SMOKE SHOP, DENISE
PASCHALL, in her individual capacity, TONY D.
PHILLIPS, TDM DISCOUNT CIGARETTES, and
THOMASINA MACK, in her individual capacity,

Defendants.

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AMON, United States District Judge.

Certain defendants ("Moving Defendants")¹ have appealed Magistrate Judge Azrack's
Discovery Order dated November 3, 2009 denying Moving Defendants' Motion to Stay
Discovery. This Court finds that that Magistrate Judge Azrack denial of Moving Defendants'
Motion was not erroneous or contrary to law. See Fed. R. Civ. P. 72(a).

Plaintiff the City of New York (the "City") seeks further discovery and depositions in
order to ascertain whether Moving Defendants are acting in violation of this Court's August 25,
2009 Order which enjoined all the defendants from selling unstamped cigarettes to the public on

¹ The defendants who sought the stay of discovery are: Monique's Smoke Shop, Ernestine Watkins,
Wayne Harris, Red Dot & Feathers Smoke Shop, Inc., Raymond Hart, Smoking Arrow Smoke Shop,
Denise Paschall, TDM Discount Cigarettes, and Thomasina Mack. Only these defendants have appealed
the denial of the stay and are referred to here as "Moving Defendants."

and after September 25, 2009. The City is not seeking discovery pertaining to the merits of the case, or any dispositive issues which may be decided by the Court of Appeals for the State of New York in the pending appeal Cayuga Indian Nation of N.Y. v. Gould, 2009 WL 1981848 (4th Dep't July 10, 2009). Moreover, the City has provided Magistrate Judge Azrack with sufficient evidence that some of the Moving Defendants have acted in violation of this Court's injunctive order.

Accordingly, Moving Defendants' appeal and request to stay discovery is denied.

Discovery is to proceed in front of Magistrate Judge Azrack.

SO ORDERED.

Dated: Brooklyn, New York
November, 25 2009

/s/
Carol Bagley Amon
United States District Judge